

## **REMARKS/ARGUMENTS**

### **I. THE AMENDMENTS TO THE CLAIMS**

New claims 23, 24 and 26 are supported by original claim 1.

New claim 25 is supported by Example B15 on page 31, lines 17 to 27, wherein the preparation of the hydrochloride salt of 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile is described.

Support for the new claim 27 can be found in the application on page 31, lines 5 to 16, Example B14, mentioning the preparation of compound 46, which is 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile, and the information in Table 2, page 37, last line, where Compound 46 is defined in terms of its structure.

New claims 28, 29, 30 are supported by original claim 1.

New claim 31 is supported by Example B15 on page 31, lines 17 to 27, wherein the preparation of the hydrochloride salt of 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile is described.

Support for the new claim 32 can be found in the examples wherein a description is given of how the compound is isolated from the reaction mixture. More in particular, support can be found on page 11, line 4. Further support can be found in example B14, page 31, line 5 to 15, wherein the preparation and purification of 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile is described. For support of isolating and purifying a salt of 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile, the Examiner's attention is respectfully drawn to Example B15 on page 31, lines 17 to 27, wherein the hydrochloride salt of 4-[[4-amino-5-bromo-6-(4-cyano-2,6-dimethylphenoxy)-2-pyrimidinyl]amino]benzonitrile is prepared.

Support for the new claim 33 can be found in the specification in the examples, for instance, the above-mentioned Examples B14 and B15 mentioning purification steps, which leads to substantially pure compounds. For support of pure stereochemically isomeric forms, the Examiner's attention is drawn towards page 12, line 12 and page 13, line 8. A person skilled

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in the art would read into those paragraphs of the description and into the examples that “pure” means “substantially pure” in view of the possible imperfection of the purification.

Support for the new claim 34 can be found in the application on page 17, line 35.

Support for the new claims 35 and 36 can be found in the application on page 21, line 31 to 32.

Support for claims 37 and 38 can be found on page 17, line 35 and page 21, line 31 to 32.

Support for claim 39 can be found on page on page 16, line 35 to 38, on page 17, line 2 and page 17, lines 14 to 18.

Support for claim 40 can be found on page 16, line 35 to 38.

Support for claim 41 can be found on page 22, line 6 to 27.

Support for claim 42 can be found on page 22, line 6 to 27.

Support for claim 43 can be found on page 16, line 35 to 38

Support for claim 44 can be found on page 16, line 35 to 38 and in the pharmacological example on page 39.

Support for claim 45 can be found on page on page 16, line 35 to 38 and in the pharmacological example on page 39.

Support for claim 46 can be found on page on page 16, line 35 to 38 and in the pharmacological example on page 39.

Support for claim 47 can be found on page on page 16, line 35 to 38 and in the pharmacological example on page 39.

Support for claim 48 can be found on page on page 16, line 35 to 38 and in the pharmacological example on page 39.

## **II. THE REJECTION UNDER 35 U.S.C. § 112**

The Examiner rejects claim 6 under 35 U.S.C. § 112, second paragraph, for use of the terms dextran and (dextran sulfate). In response, claim 6 has been amended. The word “dextran” has been deleted and the parentheses around dextrane sulfate have been deleted as well. Thus, the rejection under 35 U.S.C. § 112, second paragraph, is obviated. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, are respectfully requested.

## **III. THE DOUBLE PATENTING REJECTIONS**

### **A. Of Claim 21 Over Claims 8, 10, 19, 20 And 21 Of U.S. Patent No. 6,878,717**

The Examiner rejects claim 21 under the judicially created obviousness-type double patenting over claims 8, 10, 19, 20 and 21 of co-pending Application No. 09/430,966, now issued as U.S. Patent No. 6,878,717 (“the ‘717 patent”). Applicants respectfully traverse the rejection.

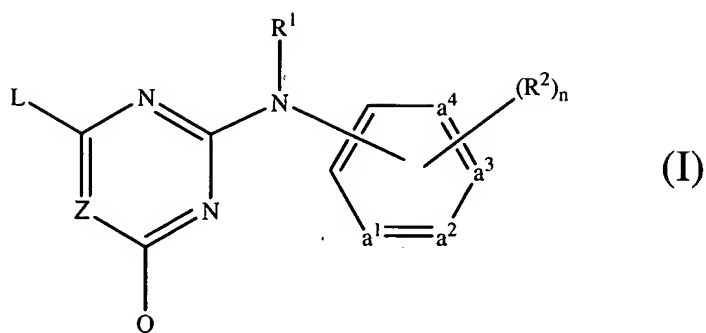
The Examiner’s attention is drawn to the fact that the claims of the ‘717 patent are each directed to a method of treatment using a broad genus of compounds, which may encompass hundreds of individual compounds. Claim 21, on the other hand, only encompasses a small number of compounds based upon a single basic structure.

Although the subject matter of the claims of the ‘717 patent can be said to “dominate” the subject matter of claim 21 of the present application, as the Federal Circuit has taken note “domination..., by itself, does not give rise to double patenting...” (In re Kaplan, 229 USPQ 678, 681 (1986)). Applicants respectfully submit that the limited number of compounds recited in claim 21 is an unobvious selection from the broad genus recited in the claims of the ‘717 patent. It is further respectfully submitted that the Examiner is not allowed to use “the disclosure of the invention in the patent specification as though it were prior art... to support the obviousness aspect of the rejection.” (Id.) Hence, in view of the fact that there is nothing in the prior art that would lead a person of ordinary skill to the present selection, there is no obviousness-type double patenting. Reconsideration and withdrawal of the rejection of claim 21 under the judicially created obviousness-type double patenting are respectfully requested.

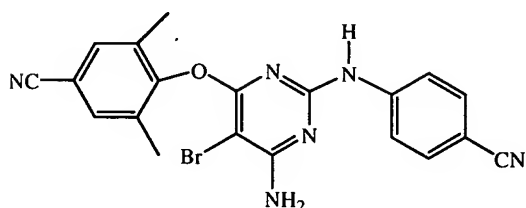
### **B. Of Claims 1-22 Over Co-pending Application No. 10/275,931**

The Examiner rejects claims 1-22 under the judicially created obviousness-type double patenting over claims 1-8 and 10-135 of co-pending Application No. 10/275,931 (“the ‘931 application”). Applicants respectfully traverse the rejection.

Applicants respectfully submit that the subject matter recited in the claims of the ‘931 application does not overlap with the subject matter recited in claims 1-22 of the present application. In particular, the claims of the ‘931 application recite formula (I):



wherein, the claims 1-22 of the present application recite compounds having the following basic structure:



The Examiner's attention is drawn to the fact that the definition of "Q" in the '931 application does not include an amino group. Hence there is no overlap between the claims recited in the '931 application and claims 1-22 of the present application. Reconsideration and withdrawal of the rejection of claims 1-22 under the judicially created obviousness-type double patenting are respectfully requested.

Early consideration and prompt allowance of the pending claims are respectfully requested. Should the Examiner require anything further, the Examiner is invited to contact Applicants' representative at the telephone number below.

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